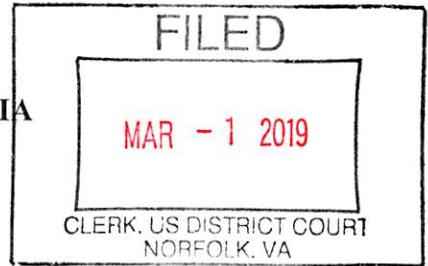


UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division



CLAUDE DAVIS,

Petitioner,

v.

CIVIL ACTION NO. 2:18cv62

HAROLD W. CLARKE, Director,
Virginia Department of Corrections,

Respondent

FINAL ORDER

Before the Court is an Amended Petition for a Writ of Habeas Corpus, ECF No. 3, filed pursuant to 28 U.S.C. § 2254 and the Respondent's Motion to Dismiss the Petition, ECF No. 8. On April 21, 2014, the Petitioner was convicted of Grand Larceny, Attempted Arson of Occupied Building, Burglary with Intent to Commit Larceny, and Violation of a Protective Order following a jury trial in the Circuit Court for the City of Newport News. The Petitioner was sentenced to nine years and six months of incarceration. In his Petition, the *pro se* Petitioner challenges the constitutionality of his prosecution, conviction, and sentence.

The Petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed December 18, 2018, recommends dismissal of the Petition with prejudice. ECF No. 23. On January 9, 2019, the Petitioner filed a Motion for Extension of Time to respond to the Report and Recommendation. ECF No. 24. The Court granted the extension and directed Petitioner to submit his objections to the Report and Recommendation

by January 25, 2019. ECF No. 25. On January 22, 2019, Petitioner timely filed his objections but did not address any of the claims he put forth in his Amended Petition nor did he address any of the findings by the Magistrate Judge in the Report and Recommendation. *See generally* ECF No. 26. Instead, Petitioner restated his objections to the Magistrate Judge's Order granting Respondent's Motion for Extension of Time/Motion to File Out-of-Time the Motion to Dismiss, ECF No. 17, and the undersigned's Order denying the Motion for Default Judgment as moot, ECF No. 19.¹ *See* ECF No. 26. On January 31, 2019, Petitioner filed an untimely second objection to the Report and Recommendation.² ECF No. 29. This objection did not address the proposed findings and recommendations made by the Magistrate Judge, as required by Fed. R. Civ. P. 72(b)(2).³ *See generally* *Id.* The Respondent has not responded to the Petitioner's objections and the time to do so has expired.

Having reviewed the record and examined the objections to the findings in the Report and Recommendation, the Court agrees with the Report and Recommendation on the grounds stated by the Magistrate Judge and ADOPTS and APPROVES the Report and Recommendation, ECF No. 23, in its entirety as the Court's own opinion. Accordingly, the Respondent's Motion to Dismiss, ECF No. 8, is **GRANTED**, and the Amended Petition, ECF No. 3, is **DENIED** and

¹ Petitioner filed a Notice of Appeal seeking to appeal the undersigned's order, ECF No. 19, (an Order denying Petitioner's Motion for Default Judgment as Moot) and the Magistrate Judge's Order, ECF No. 17, (an Order granting Respondent's Motion for Extension of Time and finding Respondent's pleadings are considered timely filed). On January 25, 2019, the Court of Appeals for the Fourth Circuit dismissed the appeal on lack of jurisdiction because “[t]he order Davis seeks to appeal is neither a final order nor an appealable interlocutory or collateral order.” ECF No. 27. The Fourth Circuit issued its mandate on February 19, 2019. *See* ECF No. 30.

² Although Petitioner filed his second objection to the Report and Recommendation untimely, the Court has considered the arguments put forth by Petitioner.

³ Instead, the gravamen of Petitioner's argument is that the state court recited a factual finding, which the Magistrate Judge noted, about which Petitioner claims there was conflicting testimony between a police officer and the victim of Petitioner's offense. ECF No. 29. Petitioner argues that this purported discrepancy constituted a “fraud committed upon the court.” *Id.* at 2.

DISMISSED WITH PREJUDICE. It is **ORDERED** that judgment be entered in favor of the Respondent.

The Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment.

The Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right, and therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

The Clerk shall forward a copy of this Final Order to Petitioner and to counsel of record for the Respondent.

It is so **ORDERED**.



Raymond A. Jackson
United States District Judge

Raymond A. Jackson
United States District Judge

March 1, 2019